

NOTICE

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2015 IL App (4th) 150282-U

NO. 4-15-0282

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

November 6, 2015
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
JOSHUA A. RIECKS,)	No. 03CF970
Defendant-Appellant.)	
)	Honorable
)	Timothy J. Steadman,
)	Judge Presiding.

PRESIDING JUSTICE POPE delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding defendant remained a sexually dangerous person and the denial of his application for discharge or conditional release were not against the manifest weight of the evidence.

¶ 2 Since May 2004, defendant, Joshua A. Riecks, has been in civil commitment as a sexually dangerous person pursuant to the Sexually Dangerous Persons Act (Act) (725 ILCS 205/0.01 *et seq.* (West 2004)). In June 2012, defendant filed a second application for discharge or conditional release, alleging he had recovered and should be discharged or conditionally released from further confinement. 725 ILCS 205/9 (West 2012). Following a bench trial, the trial court found defendant was still a sexually dangerous person and denied his application.

¶ 3 I. BACKGROUND

¶ 4 In August 2003, defendant was charged with aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2002)). In October 2003, the State filed an amended petition

alleging defendant to be a sexually dangerous person pursuant to the Act. The petition alleged (1) in August 2003, defendant knowingly committed an act of sexual penetration of O.J., who was at least 13 years of age and defendant was at least 5 years older than O.J., when defendant placed O.J.'s penis in his mouth; (2) defendant suffered from a mental disorder that predisposed him to engage in the commission of sex offenses and the disorder had existed more than one year prior to the filing of the petition; (3) defendant demonstrated propensities toward acts of sexual molestation of children; and (4) it was substantially probable defendant would engage in the commission of sex offenses in the future if not confined. In May 2004, the trial court declared defendant a sexually dangerous person and ordered him committed to the custody of the Department of Corrections (DOC) for care and treatment.

¶ 5 In December 2005, defendant, *pro se*, filed an application for discharge or conditional release. In March 2006, defendant's appointed counsel filed an application showing recovery and seeking discharge. In November 2009, the trial court found defendant remained a sexually dangerous person and denied the petition. The court ordered defendant's continued care and custody in DOC. In January 2010, this court dismissed defendant's appeal for failure to file a docketing statement.

¶ 6 In June 2012, defendant filed a subsequent application for discharge or conditional release. In March 2013, the trial court appointed counsel to represent defendant and ordered DOC to prepare a social-psychiatric report pursuant to section 9(a) of the Act (725 ILCS 205/9(a) (West 2012)).

¶ 7 In July 2014, M. Bellew-Smith, PhD, a licensed clinical psychologist who worked with DOC, conducted an evaluation of defendant pursuant to section 9(a) of the Act. 725 ILCS 205/9(a) (West 2012). She prepared a report filed with the trial court in October 2014. Bellew-

Smith also testified at the April 2015 hearing on the application. As a part of her evaluation, Bellew-Smith indicated she reviewed some 23 documents and files, interviewed the sexually dangerous persons treatment staff at Big Muddy River Correctional Center, and interviewed defendant for 2 ½ hours. Defendant was 33 years old at the time of the evaluation. This evaluation revealed defendant to be a very poor historian regarding his level of education; his sexual relationships with adults, both male and female; the number of child victims he had; and how he had perpetrated against these children. Defendant did admit abusing the child in the predicate offense.

¶ 8 Defendant reported to Bellew-Smith his sexual attraction was to young males and females. He reported he had 10 to 12 sexual partners during adolescence with whom he had played "truth or dare." He also reported, as an adult, he had sex with one girl he met on the street and two people since he had been incarcerated. Defendant was consistent in his report of being sexually abused as a child. Defendant reported to Bellew-Smith he had started fantasizing sexually about little children when he was 17 or 18 years old.

¶ 9 In addition to the 2003 predicate offense, which was the basis for the sexually dangerous person petition in Macon County, in 2002, defendant had been convicted in Sangamon County of assault of a child and aggravated criminal sexual abuse against a 13-year-old boy and a 9-year-old boy. He received three and four years' probation, respectively, and 180 days in jail for those offenses. During Bellew-Smith's interview, defendant reported a total of only two contact victims, *i.e.*, O.J., the 13-year-old male involved in the predicate offense in Macon County, and C., the 13-year-old victim in the Sangamon County case. However, the records Bellew-Smith reviewed revealed an additional victim, S.P., who was a 9-year-old victim

in the Sangamon County case. In addition, S.P. and C. had reported to the police they had seen defendant victimize another boy.

¶ 10 Bellew-Smith's record review showed defendant's offense history as follows: Defendant pulled down O.J.'s pants and performed oral sex on him while they were in a shed. Defendant gave O.J. gifts to persuade him not to tell what had happened. On multiple occasions, defendant touched C.'s "private parts" and performed oral sex on him on numerous occasions. These offenses occurred in defendant's bedroom behind a locked door. Defendant reported he had given C. candy, toys, and ice cream. S.P. played video games with defendant in defendant's bedroom. On one occasion, defendant displayed his penis to S.P. and asked S.P. to show his penis to defendant. When S.P. declined, defendant threatened to make up a story about S.P. to get him in trouble. On another occasion, defendant locked the bedroom door, pulled down S.P.'s pants and underwear, and penetrated S.P.'s anus with his penis. S.P. tried to scream and get away but defendant covered S.P.'s mouth and held him. On a third occasion, defendant tried to talk S.P. into performing anal penetration on defendant. Both C. and S.P. reported defendant had pulled down another boy's pants and tried to get the boy to touch his private parts.

¶ 11 Since defendant's commitment in 2004, he had received 30 inmate disciplinary reports (IDRs). Twenty-three of the IDRs were classified as major violations and 12 involved lengthy assignments to segregation. Many of the violations involved assaults of others, intimidation, and fighting. Defendant had also accumulated 40 treatment-program violations, for which he had been placed on probation 4 times and suspended 5 times. Since Bellew-Smith conducted her evaluation, defendant had been placed in segregation again from August 29, 2014, to September 29, 2014.

¶ 12 Defendant's primary therapist, Ms. Woods, reported defendant had an ongoing sexual relationship with another male offender. The two were separated when staff discovered they were erotically stimulating one another by talking about the details of their sexual offenses. Defendant admitted to Bellew-Smith he had an extended sexual relationship with another inmate and had been paid by another for sexual favors. Defendant further admitted a continuing sexual fantasy about an inmate who physically resembled a 12- or 13-year-old boy.

¶ 13 Bellew-Smith explained the requirements of the sexually dangerous person sex-offender-specific treatment, including (1) offense disclosure, (2) offense-specific cognitive restructuring, (3) assault cycle and intervention, (4) victim empathy, (5) arousal control, (6) clinic/core issue resolution, (7) social skills and interpersonal restructuring, and (8) lifestyle balancing and restructuring. Bellew-Smith discussed defendant's progress in treatment as follows.

¶ 14 Between September 2005 and June 2008, defendant had been in continuous segregation for repeated rule violations and staff assaults. While in segregation, defendant continued to argue and fight with cellmates, causing chaos with other inmates on the segregation unit. Although counselors did mental-health checks on defendant while he was in segregation, that was not the same as being in the systematic treatment program consisting of group counseling with defendant's peers.

¶ 15 The most recent semiannual program evaluation of defendant for the period of July through December 2013 revealed defendant was not in any particular phase of the treatment program. Defendant was assigned to the "Discovery" group, which focused on his offending behavior. Defendant needed to decrease his inappropriate behavior and attend group. During the reporting period, defendant had been on probation from August 19, 2013, to September 19, 2013,

and again from November 11, 2013, to December 11, 2013. Defendant was suspended from treatment from September 2, 2013, to October 2, 2013, and again from November 18, 2013, to December 18, 2013. Between July 2013 and December 2013, defendant received nine program tickets. Woods reported defendant's behavior with the other inmates was very bad and he was "utterly hated" by his peers.

¶ 16 The semiannual report rated treatment progress in 23 areas, using a scale of 1 (unsatisfactory), 2 (considerable need for improvement), 3 (some need for improvement), 4 (minimal need for improvement), and 5 (meets expectations). Defendant was rated unsatisfactory in 17 areas and in need of considerable improvement for the rest. He was rated as having had no opportunity to complete assignments because no tasks had been assigned to him.

¶ 17 When Bellew-Smith asked defendant about his deviant arousal and current fantasies, he admitted having sexual fantasies about C.J., the fellow inmate who physically looked like a 12- or 13-year-old boy. Defendant reported his sexual fantasies about male and female children began at age 17 or 18 and continued up to the time of his incarceration. He denied current fantasies about children. Instead he had fantasies about young-looking inmates because they were available to him. Defendant believed 12- or 13-year-old children could enjoy sex and endorsed a belief children had been sexually provocative around him in the past. He admitted feeling more comfortable around and accepted by children.

¶ 18 Defendant had a simplistic and incorrect understanding about core issues such as the importance of addressing his assault cycle, deviant cycle, victim empathy, deviant arousal, and dealing with high-risk situations. He identified high-risk situations for him was "any young child." Treatment staff reported defendant had not been addressing his core issues or his

offense-related thoughts and behaviors. These were all areas where defendant needed to make significant progress.

¶ 19 Defendant had very poor social skills. His father had recently passed away and his mother was confined to a wheelchair. Defendant indicated, if released, he would live with his mother and provide for her care. Defendant told Bellew-Smith he believed he was ready for release. However, he did not have a concrete plan for obtaining employment or how he would provide for his mother's needs. To defendant, pushing his mother's wheelchair qualified as providing for her care. He indicated his mother would provide his support.

¶ 20 Defendant had a lengthy psychiatric history. He had been diagnosed with bipolar disorder and also had seizures. He was taking various medications at DOC.

¶ 21 Defendant was clearly impaired intellectually. His judgment and insight were poor. He was viewed as having a very low average or borderline range of intellectual functioning. In addition to the bipolar disorder, Bellew-Smith diagnosed defendant with (1) pedophilic disorder, sexually attracted to males, non-exclusive; and (2) antisocial personality disorder. The pedophilic disorder impacted defendant's volitional control over offending against children and was exacerbated by his antisocial personality disorder.

¶ 22 Defendant scored a six on the Static-99R, placing him in the high-risk category for reoffense. Defendant had an overall score of 28 on the Hare Psychopathy Checklist-Revised, indicating he manifests a high number of psychopathic traits relative to incarcerated adult male offenders. Dynamic risk factors applicable to defendant are (1) sexual preoccupation; (2) deviant sexual interest, including sexual interest in male children under the age of 13; (3) emotional congruence with children; (4) lack of any emotionally intimate relationships with adults of either sex; and (5) resistance to rules and supervision. Bellew-Smith indicated resistance to rules and

supervision was probably the most predictive of recidivism. Protective factors which can reduce risk include age (over 40), physical-health-related issues, and completion of sex-offense-specific treatment. None of these protective factors applied to defendant.

¶ 23 Considering defendant's risk and his failure to recover or diminish his risk for reoffense through participation in treatment, Bellew-Smith placed defendant in the very-high-priority category for supervision and intervention in comparison to other sex offenders.

Therefore, Bellew-Smith found, to a reasonable degree of psychological certainty, defendant remained a sexually dangerous person who should remain in an institutional environment.

¶ 24 Defendant testified at the hearing on his application. He stated he had been incarcerated at Big Muddy River Correctional Center since 2003. During that time, defendant stated he had been receiving therapy. He believed he had completed the first phase of treatment regarding victimology; however, he stated his therapist felt he had not been truthful. Defendant participated in the second phase of treatment until he was placed in segregation. Defendant testified three counselors visited him while he was in segregation and helped him with his treatment. Defendant claimed he went to therapy after he was released from segregation; however, he admitted he had missed some sessions and had also been placed on probation and suspension. Defendant admitted between September 2005 and June 2008, he had been in continuous segregation for repeated rule violations and staff assaults. While in segregation, defendant continued to argue and fight with cellmates, causing chaos with other inmates on the segregation unit. Defendant stated he had been attending therapy every Thursday with Woods.

¶ 25 Defendant claimed he had learned "intervention tools how to stay out of sex offender—sexual treatment—sexual intercourse with kids." He said he had learned how to walk away from the situation. As another intervention, defendant claimed he would call his therapist

or a friend if he found himself around his victim or a child. Defendant testified he was no longer a danger to anyone in society because he loves his family and "won't hurt nobody." He stated, "If I was actually out in society, I would basically won't re-offend. I can't, you know, I won't re-offend because basically I would admit myself into a psychiatric floor before I re-offend, basically to re-offend." Defendant stated he would continue with treatment if he was released to the community. He indicated he had two brothers who were willing to help him get to treatment.

¶ 26 On cross-examination, defendant agreed he had 30 IDRs and had been in segregation 12 times, one of which was for 3 years. He agreed he was not attending group treatment while he was in segregation but said he was receiving counseling. He had not been in group treatment since August 29, 2014. Defendant agreed in addition to the time he had spent in segregation, while he was in treatment, he had also received 40 program tickets, been put on probation 4 times, and been suspended 5 times.

¶ 27 Defendant denied he had been in an ongoing relationship with another inmate, denied he had been paid for sex by another inmate, and denied he had been fantasizing about another inmate. He admitted he had been on probation and in sex-offender treatment when he committed the sexually dangerous person predicate offense.

¶ 28 II. ANALYSIS

¶ 29 On appeal, defendant maintains the State failed to prove by clear and convincing evidence he is still a sexually dangerous person. Therefore, defendant argues, the trial court's denial of his application was against the manifest weight of the evidence. We affirm.

¶ 30 Pursuant to section 9(a) of the Act, a defendant who has been found to be a sexually dangerous person may submit an application to the trial court setting forth facts demonstrating he has recovered. 725 ILCS 205/9(a) (West 2012). The trial court must then

conduct a hearing (725 ILCS 205/9(b) (West 2012)), during which the State bears the burden of proving by clear and convincing evidence the defendant still meets the statutory definition of a "sexually dangerous person" (*People v. Hancock*, 2014 IL App (4th) 131069 ¶ 140, 18 N.E.3d 941). A person is sexually dangerous if: (1) the person has suffered from a mental disorder for at least one year prior to the filing of the petition; (2) the mental disorder is associated with criminal propensities to the commission of sex offenses; (3) the person has actually demonstrated that propensity toward acts of sexual assaults or acts of sexual molestation of children; and (4) there is an explicit finding it is "substantially probable" the person would engage in the commission of sex offenses in the future if not confined. *People v. Masterson*, 207 Ill. 2d 305, 330, 798 N.E.2d 735, 749 (2003); 725 ILCS 205/1.01 (West 2012). On review, a trial court's determination a defendant is still sexually dangerous will not be disturbed unless it was against the manifest weight of the evidence, which occurs when an opposite conclusion is clearly apparent. *People v. Donath*, 2013 IL App (3d) 120251, ¶ 38, 986 N.E.2d 1222.

¶ 31 In this case, the State presented the testimony of an expert in the field of evaluating and assessing sexually dangerous persons. She opined defendant remains a sexually dangerous person. She testified defendant has a pedophilic disorder, bipolar disorder, and antisocial personality disorder. Defendant has suffered from these disorders since he was 17 years old and he was 33 at the time of the assessment. These disorders impact defendant's volitional control over sexual offending. Defendant had demonstrated his propensity toward acts of sexual molestation of children. He had made virtually no progress in sex-offender treatment despite having been in the sexually dangerous person program for over 10 years. In Bellew-Smith's professional opinion, it was substantially probable defendant would commit future acts

of sexual molestation against children if he was released to the community. Therefore, Bellew-Smith recommended defendant continue to be confined to the custody of DOC.

¶ 32 Although defendant testified he felt he had learned how to keep himself from offending if released into the community, the evidence was clear defendant had not finished any aspects of the sex-offender treatment available to him at DOC. Rather, he continued to act out sexually against other inmates and commit violent offenses against other inmates and staff. Consequently, defendant had spent much of his time at DOC either in segregation or suspended or on probation from the treatment program rather than making progress in treatment.

¶ 33 Based on the evidence presented, we find the trial court's determination defendant remained a sexually dangerous person and the denial of his application for recovery and discharge was not against the manifest weight of the evidence.

¶ 34 III. CONCLUSION

¶ 35 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2014).

¶ 36 Affirmed.